RECENT CASES.

CONTRACTS.

Insurance Policy—Notice of Cancellation—Return of Premium.—Backus et al., v. *Exchange Fire Insurance Co. of City of New York*, 49 N. Y. Supp. 677. By the terms of an insurance policy it was provided that it could be cancelled at any time by the insurance company giving five days' notice of such cancellation, and when so cancelled, if the premium thereon had been paid, the unearned portion would be returned on the surrender of the policy. *Held*, that the payment of such unearned portion was not a prerequisite to the cancellation of the policy, if the insurance company offered to return the same on demand and surrender of policy in its notice of cancellation. *Walthear* v. *Ins. Co.*, 2 App. Div. 330. *Tritch* v. *Ins. Co.*, 152 N. Y. 635 distinguished.

Inn Keepers—Extent of Liability for Lost Goods.—Amey v. *Winchester*, 39 Atl. Rep. (N. H.) 487. Plaintiff attended a banquet at a hotel, where he registered and was assigned a room. Upon leaving the dining-room his hat was missing. *Held*, that the inn keeper was not liable. The mere registration and assignment put him in no different position than if he had registered and obtained a room elsewhere.

Pledge—What Constitutes.—Matthewson v. *Caldwell*, 52 Pac. Rep. (Kan.) 104. Certain collateral notes were set apart from others of a like kind as pledges, were placed in a package indorsed with a memorandum of the terms of the pledge, were pointed out to pledgee, and put in the vault of a bank where the pledgee and her husband, who was also one of the pledgors, had other securities. The deposit of the pledge was made by the husband, to whom it had been delivered as agent of the wife and in her presence, the nature of the transaction having been previously explained to her, and her assent thereto secured. The bank clerk to whom the notes were intrusted was instructed, pledgee assenting, to take special charge of them, and substitute other notes in place of such as might thereafter be paid. *Held*, a valid pledge, there being such a change of possession as to constitute a valid delivery, even though the pledgors had access to the place where the pledge was kept, and could have violated the terms of the pledge. The court attempts to distinguish the case from the very similar one of *Casey* v. *Cavaroc*, 96 U. S. 467, on the ground that in the latter case there was no memorandum or other distinguishing mark on the pledge, nor any such assent by the pledgee as to cause a novation, as in the present case.

Contract—Beneficial Interest of Third Party.—Thomas Mfg. Co. v. *Prather*, 44 S. W. Rep. (Ark.) 218. Defendant company had entered into a contract by which it bound itself to furnish medical attendance to one of its employees, in case he should be injured while in its employ. The employee, on being so injured, engaged the services of plaintiff as his physician, with the full knowledge and approval of defendant. *Held*, Bunn, C. J., dissenting,

that plaintiff was not entitled to recover the value of his services from defendant, because of any contract implied from defendant's knowledge, plaintiff having testified that he would have rendered the services regardless of the facts that defendant would have been liable.

EVIDENCE.

Notes—Conditional Delivery—Parol Evidence—Statute of Frauds.—Hurt v. *Ford, et al.*, 44 S. W. Rep. (Mo.) 228. *Held*, where defendant's agent delivered the note of defendant to plaintiff, parol evidence is inadmissible to show that the agent was instructed not to deliver the note until he had procured another signature to it, and that these facts were known to plaintiff. The opinion considers such a transaction as an attempt to deliver the note in escrow; and, whatever may be the law elsewhere, that it is well settled in this State that it cannot be done by delivery to the obligee, but may be to a third party. Barclay, C. J., and Macfarlane, J., dissenting, assert, however, that not only are the opinions in other States conflicting on the point of conditional delivery to the payee, but that there is a want of harmony in the decisions in Missouri. They cite as especial authority for their view of the transaction, *Burke* v. *Delaney*, 153 U. S. 234, 14 Sup. Ct. 816; approved in *Michels* v. *Olmstead*, 157 U. S. 198, 15 Sup. Ct. 580.

Evidence—Privileged Communications.—Morton v. *Smith, et al.*, 44 S. W. Rep. (Tex.) 683. One who is employed as stenographer and clerk in an attorney's office is not prohibited from testifying to statements he overheard made by a party to an action to the attorney. The privilege extends only to the attorney and persons who are the media of communication between client and attorney.

TRIAL.

Abatement—Another Action Pending.—Wilson v. *Milliken*, 44 S. W. Rep. (Ky.) 660. The pendency of an action in a United States court is ground for a plea in abatement in a subsequent action in a State court in the same district, where the parties and subject matter are the same, and the relief sought is also the same. The statements to the contrary in *Gordon* v. *Gilfoil*, 99 U. S. 169; and *Stanton* v. *Embrey*, 93 U. S. 554, are considered by the court as mere dicta, which have been mistakenly followed by such cases as *Pierce* v. *Feagans*, 39 Fed. 587; and *Kilpatrick* v. *Railroad Co.*, 38 Neb. 620, 57 N. W. 664. Du Relle, J., dissenting, denies that these statements are dicta, and asserts that such cases as *Radford* v. *Folsom*, 14 Fed. 97, which is approved by the majority in this case, have since been overruled.

Remarks of Judge—Error Without Prejudice.—Klinker v. *Third Ave. R. Co.*, 49 N. Y. Supp. 793. During the trial of the case defendant's counsel moved for an adjournment, whereupon the court said: "This is simply trying to fool, to hoodwink the jury; that is all." In charging the jury, the court, to rectify the error, said: "Whatever has been said in regard to the matter by counsel on either side, or by myself, is withdrawn entirely from your consideration, including the remark that it was mere hoodwinking the jury." *Held*,